

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

GILLES COHEN, JOHN MICKLO,
MUHAMMAD ADNAN, DONNY WOO,
BENJAMIN MOORE, MARY LOU
PLANTE, MEREDITH MEIN DE VERA,
DAN ROSENTHAL, IGOR
KRAVCHENKO, ALEXANDRA EFANTIS,
BLAISE FONTENOT, KATHERINE
MUTSCHLER, JACQUELINE FERGUSON,
BENJAMIN CHRISTENSEN, JENNIFER
LILLEY, STEVEN BIONDO, CHANTEL
NELSON, JACQUELINE BROCKMAN,
MARTY BROWN, CHRISTINE KING, and
KEVIN KING, individually and on behalf of
all others similarly situated,

Plaintiffs,

v.

SUBARU OF AMERICA, INC., *et al.*

Defendants.

Case No.: 1:20-cv-08442-JHR-AMD

ORDER

AND NOW, upon consideration of the motion to dismiss filed by Defendant Subaru of America, Inc. (“Subaru”) [Dkt. 80], and for the reasons set forth in the opinion accompanying this Order, the Court hereby **ORDERS** that Subaru’s motion is **GRANTED IN PART AND DENIED IN PART** as follows:

Breach of Implied Warranty of Merchantability		
Plaintiff(s)	State (Count)	Decision
Anderson, Adnan, Bancod-Hile, Cohen, Brockman, Brown, Gardener,	Multiple	Motion denied (no confirmation by Subaru of the defect)

Karrat, Kravchenko, Lilley, Mein de Vera, Micklo, Moore, Nelson, Oakley, Plante, Whitley, and Woo		
Multiple	Cal. (Count XVII), Fl. (Count XXII), N.Y. (Count XXXIX), Tenn. (Count LI), Wash. (Count LVIII)	Motion denied (lack of privity)
Griffin	Ala. (Count XI)	Motion granted (no manifestation of Defect)
Oakley	Ala. (Count XI)	Motion granted (pre-suit notice)
Whitley	Ala. (Count XI)	Motion granted (pre-suit notice)
Mein De Vera	Ark. (Count XIII)	Motion granted (pre-suit notice)
Weeks	Conn. (Count XX)	Motion granted (no manifestation of Defect)
Torresquintero	Conn. (Count XX)	Motion granted (no manifestation of Defect)
Rosenthal	Fla. (Count XXII)	Motion granted (no manifestation of Defect)
Sweeton	Tenn. (Count LI)	Motion granted (no manifestation of Defect)
Kravchenko	Ill. (Count XXVIII)	Motion granted (pre-suit notice)
Efantis	Md. (Count XXX)	Motion granted (no manifestation of Defect)
Fontenot	Md. (Count XXX)	Motion granted (no manifestation of Defect)
Micklo	Minn. (Count XXXIV)	Motion granted (pre-suit notice)
Perry	N.C. (Count XLI)	Motion granted (no manifestation of Defect)
Mutschler	N.J. (Count VI)	Motion granted (no manifestation of Defect)
Ferguson	N.J. (Count VI)	Motion granted (no manifestation of Defect)
Sroelov	Nev. (Count XXXVII)	Motion granted (no manifestation of Defect)
Christensen	Or. (Count XLIII)	Motion granted (no manifestation of Defect)
Biondo	R.I. (Count XLVIII)	Motion granted (no manifestation of Defect)
Schultz	S.C. (Count XLIX)	Motion granted (no manifestation of Defect)
Nelson	Tex. (Count LIII)	Motion granted (pre-suit notice)
Gardener	Tex. (Count LIII)	Motion granted (pre-suit notice)
Common Law Fraudulent Concealment/Omission (Count II)		

State	Decision
N.J.	Motion granted (duty to disclose)
Ala.	Motion granted (duty to disclose)
Arkansas	Motion granted (duty to disclose)
California	Motion Granted (economic loss rule)
Conn.	Motion granted (duty to disclose)
Fla.	Motion granted (duty to disclose)
Ga.	Motion granted (duty to disclose)
Haw.	Motion denied
Ill.	Motion granted (duty to disclose)
Md.	Motion granted (duty to disclose)
Mass.	Motion granted (duty to disclose)
Minn.	Motion denied
Nev.	Motion granted (duty to disclose)
N.Y.	Motion denied
N.C.	Motion denied
Or.	Motion granted (duty to disclose)
Pa.	Motion granted (duty to disclose)
R.I.	Motion denied
S.C.	Motion granted (duty to disclose)
Tenn.	Motion denied
Tex.	Motion granted (duty to disclose)
Vt.	Motion denied
Wash.	Motion denied
Wisc.	Motion granted (economic loss rule)
State Consumer Protection Statute and Statutory Fraud Claims	
State(s) (Count)	Decision
Alabama Deceptive Trade Practices Act (Count X), Arkansas Deceptive Trade Practice Act (Count XII), South Carolina Unfair and Deceptive Trade Practices Act (Count XLVIII), Tennessee Consumer Protection Act (Count L)	Motion denied (state class action bars)
New Jersey Consumer Fraud Act (Count VI)	Motion granted (ascertainable loss as to Plaintiffs Ferguson and Mutschler)
Arkansas Deceptive Trade Practices Act (Count XII)	Motion Denied (actual loss)
Wisconsin Deceptive Trade Practices Act (Count LIX)	Motion granted (no actionable affirmative representation)

Strict Product Liability (Count IV)	
State(s)	Decision
N.J., Or., Wash, S.C.	Motion denied (statutory preemption)
N.J.	Motion granted (economic loss rule)
Ala.	Motion granted (economic loss rule)
Fla.	Motion granted (economic loss rule)
Cal.	Motion granted (economic loss rule)
M.D.	Motion denied (economic loss rule)
N.C.	Motion granted (claim barred by N.C. statute)
Additional Arguments	
Issue (Count)	Decision
Standing for claims asserted under the law of a state where no Plaintiff resides or purchased a vehicle.	Motion granted
Standing for Plaintiff Karrat (all claims)	Motion denied
Subject-matter jurisdiction for Magnuson-Moss Warranty Act Claims (Count I)	Motion granted
Breach of Contract (Count III)	Motion denied
Unjust Enrichment (Count IX)	Motion granted
Implied covenant of good faith and fair dealing: N.J. (Count VIII), Fla. (XXXIII), Minn. (XXXV)	Motion granted
Whether economic loss rule bars claims for negligent recall/undertaking (Count V)	Motion granted as to Count V for negligent undertaking, denied as to negligent recall
Prudential mootness (all claims)	Motion denied
Primary jurisdiction (all claims)	Motion denied
Preemption of negligent recall claim (Count V)	Motion granted

SO ORDERED.

March 10, 2022

/s/ Joseph H. Rodriguez

Hon. Joseph H. Rodriguez, USDJ